

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
240 777-6600

Case No. A-5703

PETITION OF PATRICIA E. LEVEE

ORDER EXTENDING TIME FOR WRITTEN DECISION OF THE BOARD

(Order adopted March 13, 2002)
(Effective Date of Resolution, April 10, 2002)

Case No. A-5703 is the application filed for variances to Section 59-C-1.323(b)(2) of the Zoning Ordinance to permit the construction of two one-story additions.

Pursuant to the Board's Rules of Procedure, Section 9.2, entitled Extension of time for mailings, the Board adopted the following Resolution:

"BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that pursuant to the Rules of Procedure of the Board, and because additional time is required, the allowable time for a written decision on the above-entitled proceeding be, and the same hereby is extended."

The subject property is Lot 25, Block C, Potomac Highlands Subdivision, located at 9411 Overlea Drive, Rockville, Maryland, in the RE-1 Zone, (Tax Account No. 00088713).

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 10th day of April, 2002.

Katherine Freeman
Executive Secretary to the Board

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Rockville, Maryland 20850
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Case No. A-5703

PETITION OF PATRICIA E. LEVEE
(Hearing held January 30, 2002)

OPINION OF THE BOARD
(Effective date of Opinion, April 10, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59 Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(b)(2). The petitioner proposes to construct two one-story additions. Both additions require a variance of nine (feet) as they are within twenty-six (26) feet of the rear lot line. The required rear lot line setback is thirty-five (35) feet.

Paul Maarec, an architect, appeared with the petitioner at the public hearing.

The subject property is Lot 25, Block C, Potomac Highlands Subdivision, located at 9411 Overlea Drive, Rockville, Maryland, in the RE-1 Zone (Tax Account No. 00088713).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct two one-story additions in the northeast section of the property.
2. The petitioner testified that the rear boundary of the property angles sharply inward, resulting in a very shallow rear yard. The petitioner testified that the rear yard of the property is heavily treed and backs up to Watkins Branch Park. The petitioner testified that the addition would only be partially visible to one of the neighboring properties. See, Exhibit Nos. 10(c) and 10(d).
3. The petitioner testified that a pond is located in the western section of the lot and that two-thirds of the property is located in a floodplain. The petitioner testified that she has spoken with her neighbors and that the neighbors support the variance request. Letters of support were entered into the record as Exhibit Nos. 12(a) and 12(b).
4. Mr. Maarec testified that only a corner of each of the proposed additions would be located in the setback, as shown the site plan (Exhibit No. 4).

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The property is an oddly shape lot, with an angled rear yard boundary. The property's odd shape results in a very shallow rear yard and a rear yard that is significantly smaller than the neighboring and adjoining properties. See, Exhibit No. 7 (Zoning Vicinity Map).

The property is located in a floodplain and has a pond that is located in the western section of the lot. The requested variances are required only for the northeast corner of both of the proposed additions.

The Board finds that these conditions are peculiar to the property and that the strict application of the regulations would result in unusual practical difficulties for and an undue hardship upon the property owners if the variances were to be denied.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the requested variances are the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed additions will continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The record contains no testimony or correspondence in opposition to the variance request. Letters of support were entered into the record as Exhibit Nos. 12(a) and 12(b).

The proposed construction will be screened by the property's existing vegetation and the property backs up to Watkins Branch Park. The Board finds that the variances will not be detrimental to use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested two variances of nine (9) feet from the required thirty-five (35) foot rear lot line setback for the construction of two one-story additions are granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of her witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) and 5(b).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 10th day of April, 2002

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.